

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA, ex rel., et al,</b>	)	
<b>PLAINTIFF,</b>	)	
<b>v.</b>	)	
	)	
<b>TYSON FOODS, INC. et al,</b>	)	
<b>DEFENDANTS AND</b>	)	
<b>THIRD PARTY PLAINTIFFS,</b>	)	<b>No. 05-CV-0329</b>
	)	
<b>v.</b>	)	<b>ANSWER</b>
	)	
<b>City of Tahlequah, et al,</b>	)	
<b>THIRD PARTY DEFENDANTS,</b>	)	
	)	
<b>BARTOW AND WANDA HIX</b>	)	
<b>11709 N. 569 Rd.</b>	)	
<b>PROCTOR, OK 74457</b>	)	

**ANSWER TO THIRD-PARTY COMPLAINT**

Third party defendants Bartow and Wanda Hix (collectively, the “Defendant”) in answer to Plaintiffs’ Third-Party Complaint (the “Complaint”), states the following:

**ANSWER**

1. Defendant denies the allegations in paragraphs 1-143 of the Complaint.
2. As to paragraph 144, the Defendants reside at 11709 N. 569 Rd., Proctor, Oklahoma, and are without sufficient knowledge to determine whether they have “legal title” to the property and are without sufficient knowledge to determine whether the legal description set forth in paragraph 144 is accurate.
3. Defendant denies the remainder of the allegations in paragraph 144.
4. Defendant denies the allegations in paragraphs 145-221.

### **AFFIRMATIVE DEFENSES**

1. To the extent that Defendant owns property within the Illinois River Watershed (“IRW”), the alleged actions of Defendant do not constitute natural resource damage under 42 USC § 9607(f) (“CERCLA”).

2. To the extent that Defendant conducts any activities alleged in paragraph 144 of the Complaint, Defendant states that such conduct is lawful, prudent, officially sanctioned by the Legislature of the State of Oklahoma, is not conducted in excess of agronomic need, and is consistent with good agricultural practices.

3. The Third Party Plaintiffs are guilty of comparative negligence of such a degree as to reduce or bar recovery from the Defendant.

4. The injuries of the Third Party Plaintiffs, if any, occurred without negligence or any other unlawful act or omission on the part of the Defendant.

5. The damages of the Third Party Plaintiffs, if any, were not proximately, or directly, caused by any action on the part of the Defendant.

6. The damages of the Third Party Plaintiffs, if any, were caused by the sole negligence of the Third Party Plaintiffs.

7. The damages of the Third Party Plaintiffs, if any, were proximately, or directly, caused by a third party over which Defendant has no control or supervision.

8. The Third Party Plaintiffs voluntarily assumed the risk for a known danger and are not entitled to a recovery in this action.

9. The injuries of the Third Party Plaintiffs, if any, were due to conditions beyond the control of the Defendant.

10. The claims of the Third Party Plaintiffs are barred by the doctrine of laches.

11. Insufficiency of Process.

12. Insufficiency of Service of Process.

13. Third Party Plaintiffs fail to state a claim upon which relief can be granted.
14. Third Party Plaintiffs' claims are barred by the statute of limitations.
15. Third Party Plaintiffs' claims are barred by the equitable doctrine of unclean hands.
16. Any other matter that may constitute an affirmative defense.

WHEREFORE, Third Party Defendants, Bartow and Wanda Hix, pray that Third Party Plaintiffs take nothing by way of the Complaint, that Defendant be awarded reasonable attorney's fees and costs and such other relief as the Court deems just and equitable.

### **COUNTERCLAIMS**

Due to the complex nature of the litigation and likelihood of extensive discovery, Third Party Defendant reserves the right to add counter claims as the above-referenced matter progresses.

Respectfully Submitted,

s/ Angela D. Cotner  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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I hereby certify that on this 10<sup>th</sup> day of April, 2006, I transmitted the a true and correct copy of these documents to the following who are not registered with the ECF System by depositing the same into the United States Mail with proper postage prepaid thereon:

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